

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/12/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Supplement No. 1 to Agreement with State of Alabama for Huntsville Safe Routes to School Project

Exact Wording for the Agenda:

Resolution authorizing the Mayor to amend the agreement with the State of Alabama Department of Transportation for Safe Routes to School Projects, Project No. SRTS-SR09 (902), as adopted by Resolution No. 08-1083 of November 6, 2008, by Supplement No. 1

Note: If amendment, please state title and number of the original

08-1083

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow

and accomplish and; any other information that might be helpful.

This is Supplemental Agreement No. 1, which replaces Parts 2 and 3 of the original agreement. This Supplemental Agreement supersedes the agreement adopted and approved by the City Council on the 12th day of January, 2012, by Resolution No. 12-43.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 4/2/12

ROUTING SLIP

CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **4/12/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Revised ALDOT Agreement**

Document Name: **Safe Routes to School SRTS-SR09 (902)**

City Obligation Amount: **0**

Total Project Budget: **0**

Uncommitted Account Balance: **0**

Account Number:
be let by ALDOT

N/A Construction projects will

Procurement Agreements


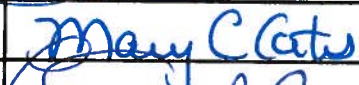

Not Applicable

Not Applicable

Grant-Funded Agreements

**Not
Applicable**

Grant Name:

Department	Signature	Date
1) Originating		4/2/12
2) Legal		4/2/12
3) Finance		4/4/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the City enter into a Supplemental Agreement 1 with the State of Alabama, acting by and through the Alabama Department of Transportation relating to the project titled Safe Routes to School Project, Project No. SRTS-SR09 (902), to amend the November 6, 2008, Agreement which is before this Council.

BE IT FURTHER RESOLVED that all other and remaining provisions of the Agreement of November 6, 2008, shall remain the same, and that the Mayor be, and is hereby authorized to enter into a Supplemental Agreement between the State of Alabama and the City of Huntsville for, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement supersedes agreement adopted and approved by the City Council on the 12th day of January, 2012, by Resolution No. 12-43. Revised Agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between the State of Alabama and the City of Huntsville, Alabama Project SRTS-SR09 (902) Huntsville Safe Routes to School Project, Huntsville, Alabama Supplement Number 1" consisting of nine (9) pages and Exhibits "M", "N" and "O" and the date of April 12, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of April, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 12th day of April, 2012.

Mayor of the City of Huntsville,
Alabama

**AGREEMENT
SAFE ROUTES TO SCHOOL PROJECT

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF HUNTSVILLE
FOR
INFRASTRUCTURE IMPROVEMENTS IN
MADISON COUNTY**

Project No. SRTS-SR09(902)

CPMS Reference Number: 100052480

SUPPLEMENT NUMBER (1)

THIS SUPPLEMENTAL AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the City of Huntsville, hereinafter referred to as the AGENCY, in cooperation with the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, the STATE and the AGENCY entered into an "Agreement for a Safe Routes to School Project" for the above referenced project, on the 2nd day of February 2009; and

WHEREAS, the STATE and AGENCY desire to amend the Agreement entered into on the 2nd day of February 2009 by execution of this supplemental agreement.

NOW, THEREFORE, the parties hereto, for, and in consideration of the premises stated herein, do hereby mutually promise, stipulate, and agree that the foregoing agreement between the parties dated February 2, 2009, be and the same is hereby amended by replacing all items of PART TWO (2): PROJECT PROVISIONS and PART THREE (3): MISCELLANEOUS PROVISIONS in the following respect:

- (1) The AGENCY will furnish all right-of-way for this Project without cost to the STATE.
- (2) The AGENCY will adjust and/or relocate any utilities in conflict with the Project Improvements without cost to the STATE, including any underground storage tanks and appurtenances.

1 President of the City Council of the City
of Huntsville, AL
Date: April 12, 2012

- (3) The AGENCY will perform all preliminary engineering to develop the construction plans without cost to the STATE. Construction plans will be furnished to the Office Engineer, one-hundred twenty days prior to the scheduled letting. The AGENCY shall follow the applicable Department guidelines for project development using Federal funds including guidelines developed by the STATE. The STATE will solicit bids for construction when the entire bid package (plans, specification, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the STATE will review all bids and make the award.
- (4) Invoicing: The AGENCY will, when appropriate, submit invoices to the STATE for reimbursement for work performed by or for the AGENCY in carrying out the terms of this agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Division Engineer for payment. The AGENCY may bill the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid and the invoice will be notarized. The cost allowable is the cost defined in 41 CFR Subpart 1-15.7 of the Federal Procurement Regulations and will include direct and indirect cost incurred in carrying out the project as shown in the approved application and the documents related thereto.
- (5) Invoices for any work performed by the AGENCY under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- (6) This Project will be developed in compliance with all applicable laws of the STATE and the AGENCY and applicable federal laws, regulations, and requirements.
- (7) The AGENCY will furnish all construction and inspection engineering for this Project and will be reimbursed from the project funding without cost to the STATE.

- (8) The AGENCY will furnish the inspection and resources required for sampling and testing of materials as needed for the Project.
- (9) The funding for this project is limited to the approved application amount: \$245,421.00. Any additional costs must be borne by the AGENCY. In the event the Project work is not completed for any reason, the AGENCY will refund to the STATE all funds previously expended by the STATE on behalf of the AGENCY.
- (10) The STATE Division Office will be the point of contact for the STATE for the work under this Agreement for the AGENCY.
- (11) Upon completion and acceptance of the work by the STATE, the AGENCY will assume full responsibility for maintenance of the project.
- (12) It is clearly understood by both parties that the STATE will not commit any STATE funds beyond the SRTS Federal funds approved for this project. The SRTS funds will provide 100% of all costs for these improvements.
- (13) The AGENCY will be responsible at all times for the maintenance of the facilities constructed under this Agreement and will protect, defend, indemnify and hold harmless the State of Alabama, the Department of Transportation, the officials, officers, employees and agents of each, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever for any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement and from and against those at any time out of or connected with performed work. By entering into this agreement, the AGENCY is not an agent of the State, its officers, employees, agents or assigns. The AGENCY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.
- (14) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (15) The approved allocation of funds for this Project will lapse if the project has not been authorized within twenty-four (24) months of the date of execution of this agreement. A time extension may be granted by letter from the Transportation Director.

- (16) The STATE Division Office will retain all books, records, and other documentation relative to this Agreement for a minimum of three (3) years after project termination, close out or expiration of federal interest.
- (17) The STATE Division Office will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133, whichever is applicable.
- (18) Nothing will be construed under the terms of the Agreement by the STATE or the AGENCY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (19) In the event the AGENCY fails at any time, in any manner, to comply with any provision, requirement, term or condition of this Agreement, such failure will constitute a default by the AGENCY under this Agreement. Any such default or defaults not corrected by the AGENCY within thirty (30) days following receipt of written notice from the STATE by certified or registered mail of such default or defaults, will be deemed a breach by the AGENCY of this Agreement, and the right on the part of the STATE to terminate the Agreement by giving ten (10) days written notice of termination. A waiver by the STATE of a default or defaults by the AGENCY will not constitute a waiver of subsequent default or defaults by the AGENCY. In addition, if funding for this project is terminated by FHWA, the STATE will have the right to terminate this Agreement by giving ten (10) days written notice of termination. Said notice will be mailed by certified or registered mail.
- (20) Exhibits M, N, and O are attached and hereby made a part of this Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval of the Governor of Alabama.

SEAL:

ATTEST:

THE CITY OF HUNTSVILLE, Alabama

City Clerk (Signature)

BY: _____
As Mayor (Signature)

Charles E. Hagood
Type name of Clerk

Mayor Tommy Battle
Type name of Mayor

APPROVED AS TO FORM:

BY: _____
Jim R. Ippolito, Jr., Chief Counsel

RECOMMENDED FOR APPROVAL:

Johnny Harris, Division Engineer

Robert J. Jilla
Multimodal Transportation Engineer

D. W. Vaughn
Chief Engineer/Deputy Director

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and by the Governor on this _____ day of _____, 20__.

Robert Bentley, Governor

CONSULTANT 3/19/90
REVISED 7/18/90
REVISED 6/16/11

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

CONSULTANT 2/15/95
REVISED 5/30/02
REVISED 6/16/11

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive on all parties.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to consider using appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

REVISED 11/16/11

EXHIBIT O
PAGE 1

COOPERATIVE MAINTENANCE PROVISIONS

1. The STATE'S Division Office, Bureau of Maintenance, Landscape Architect, and in the case of interstate highways, the Federal Highway Administration, shall review and approve all final plans and specifications prior to advertisement for construction bids.
2. The AGENCY agrees to maintain the vegetative cover within the project boundaries by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover (turf and ground cover) reaches 12 inches. Reschedule mowing operations in accordance with the planned frequency. In the event that shrubs and/or trees are planted within the area, trimming and weeding in and around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance.

Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if moundings of the clippings or other incidental debris occurs. Note: The AGENCY agrees to remove or cut to below 4 inches any vegetation that exceeds clear zone standards as defined in the AASHTO "Guide for Transportation Landscape and Environmental Design." For example: trees and shrubs whose ultimate trunk diameter exceeds 4 inches. The AGENCY will immediately remedy any and all clear zone and sight encroachments in accordance with AASHTO's "Transportation Landscape and Environmental Design Guide."
3. The AGENCY will see that adequate sight distances are maintained for maximum public safety; otherwise, the STATE reserves the right to remedy this situation in the most expedient manner.

REVISED 11/16/11

EXHIBIT O
PAGE 2

4. The STATE is not responsible for the safety of the individuals involved or taking part in this work during maintenance operations. Signs indicating "MEN WORKING" can be obtained from the STATE prior to work and must be returned after completion of work.
5. If STATE construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the STATE to establish a stand of vegetative cover if deemed necessary by the STATE and then the AGENCY's responsibility to maintain the vegetative cover as stipulated herein.
6. All work shall be subject to the inspection and approval of the STATE. A detailed description of the proposed work must accompany this and any associated proposal. The STATE does not grant applicant any right, title, or claim on any highway right-of-way.
7. The AGENCY agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
8. The AGENCY shall be solely responsible for and hold harmless the STATE for any claim for damage done to existing private property, public utility, or the traveling public.
9. All disturbed areas shall be topsoiled, and re-vegetated by the AGENCY in accordance with standard specifications of the STATE.
10. In accomplishment of the work by the AGENCY, or its contractor, no drainage structures or channels will be changed or altered other than as shown on the project plans.
11. Failure of the AGENCY to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the STATE.